IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10606 OF 2004

Yuvaraj Shankar Gosavi & Anr ...Petitioners

Versus

Ramhari Babu Gosavi & Ors ...Respondents

.....

Mr. Nitin Mule h/f G.S. Godbole, counsel for Petitioners

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CORAM: B. H. MARLAPALLE, J.

DATED: 31ST MARCH, 2005

P. C.:-

1. Heard the Mr. Mule, the learned counsel for the petitioner who had filed Regular Civil Suit No. 189 of 1997 for perpetual injunction. An application at Exh.5 filed for temporary injunction was dismissed and therefore, the plaintiff filed Civil Misc. Appeal No. 154 of 1997 which was also dismissed on 19.4.2004. The Regular Civil Suit No. 189 of 1997 was decided on 31.7.2000 and the decree was passed in favour of the petitioner. The defendant has challenged the said decree in Civil Appeal NO. 325 of 2000 filed on or about 7.8.2000. While the appeal was pending for about four years, the plaintiff moved an application some times in January/February, 2004 for amendment of the plaint and this application at

Exh.33 has been partly allowed to the extent of impleading the legal representatives of the original defendant Baburao Gosavi by the learned Additional District Judge at Solapur vide his order dated 19.6.2004. The petitioner is aggrieved by rejection of the amendment regarding the petitioner being dispossessed of the suit land and consequent prayer for restoration of possession.

2. The learned Judge of the Lower Appellate Court noted that R.C.S. No. 189 of 1997 was decided on 31.7.2000 and during its pendency at no point of time the plaintiff had brought to the notice of the trial court that he was dispossessed. In the application filed at Exh.33 though it was alleged that he was dispossessed during the pendency of the suit, no specific date was given. The R.C.S. No. 189 of 1997 was decreed in favour of the plaintiff by perpetually restraining the defendants from obstructing the plaintiff’s possession and enjoyment of the subject suit land. This decree therefore, duly proved that the plaintiff was in possession of the suit land even when the suit was decreed i.e. on 31.7.2000. The fact of losing possession was thus not known to the trial court and it was not the case of the plaintiff that he lost the possession while the appeal was pending. These reasonings given by the lower appellate court in partly rejecting the

amendment application at Exh.33 cannot be termed as perverse or patently erroneous so as to call for interference in this petition under Article 227 of the Constitution.

3. Hence, the petition is rejected summarily.